

# CONFIRMATION HEARING OF BROOKSLEY E. BORN AND DAVID D. SPEARS

Y 4.AG 8/3: S.HRG.104-790

Confirmation Hearing of Brooksley E. Born and David  
D. Spears, S. Hrg. 104-790, May 21, 1996 (104-2)

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## COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

THE CONFIRMATION HEARING OF BROOKSLEY E. BORN TO BE CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION AND DAVID D. SPEARS TO BE COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION

MAY 21, 1996

Printed for the use of the  
Committee on Agriculture, Nutrition, and Forestry



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# **CONFIRMATION HEARING OF BROOKSLEY E. BORN TO BE CHAIRMAN, COMMODITY FU- TURES TRADING COMMISSION AND DAVID D. SPEARS TO BE COMMISSIONER, COMMOD- ITY FUTURES TRADING COMMISSION**

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**TUESDAY, MAY 21, 1996**

**U.S. SENATE,  
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,  
Washington, DC.**

The committee met, pursuant to notice, at 8:48 a.m., in room SR-328, Russell Senate Office Building, Hon. Richard G. Lugar, Chairman of the committee, presiding.

Present or submitting a statement: Senators Lugar, Dole, Leahy, Conrad, and Kassebaum.

The CHAIRMAN. This hearing of the Senate Agriculture Committee is called to order. We have come today to consider the nominations of Brooksley Born to be chairman and David Spears to be a member of the Commodity Futures Trading Commission. We are honored by the presence of the Majority Leader of the Senate and the Chairman of the House Agriculture Committee, who have an interest in these nominees.

And I would point out, before introducing Senator Dole to make a statement, that the Majority Leader has indicated many times the importance of filling these positions on the CFTC. There have been two vacancies for some time; a third vacancy will occur, perhaps at the end of June, with the expiration of another member. The Majority Leader knows of my interest in trying to propel these nominees onward. We are grateful the President has forwarded the nominations. The paper has been received and I will affirm that I have read the FBI reports, which were at a level 2 clearance; that is, a survey back over the last 15 years of the nominee.

The CHAIRMAN. Now, at this point, I will recognize the Majority Leader, and very honored Member of our committee, Bob Dole.

## **STATEMENT OF HON. ROBERT DOLE, A U.S. SENATOR FROM KANSAS**

Senator DOLE. Thank you, Mr. Chairman. It is a pleasure for me to be present to say a word about my friend, Dave Spears, who also happens to be a member of my staff and a valued member of my staff. I am here because I think Dave brings what we should look for in members of the Commission.

He has gained a practical knowledge of the agriculture and financial communities by firsthand experience, and I think that is very important. He was raised in rural America. In fact, he was telling me last night, his family had about 2,000 acres of wheat. There are about 200 left. We have had a bad, bad year in Kansas. His brothers and father have been struggling to make ends meet in Osborne County, which is north of my home county of Russell.

Dave understands the ups and downs of agriculture and what it means to farmers, and he has a solid perspective. Plus, he has been traveling all over our State working with Members, your staff, and others, for the past several years. So he knows about agriculture issues all over the country. This sets him apart from those who try to regulate agriculture policy in Washington, without ever having lived in rural America.

In addition to that solid farm and agriculture background, Dave spent more than 10 years working in the financial community. So Dave does know the markets, and he knows the industry that the CFTC regulates. I think he represents the best we have to offer in our State. He is hard working; he is results oriented. While serving as my Kansas State director, he was responsible for overseeing the daily operations of three State offices. In this, and in his previous responsibilities, he has served Kansas with dedication and skill.

And I think his arrival at the CFTC could not come at a better time. Last week, this committee held an oversight hearing on the Commodity Futures Trading Commission. Tight grain supplies, high demand and severe weather conditions have created significant price volatility in the marketplace. We have been without a full commission, as the Chairman indicated, for nearly 1 year. I believe a full commission is necessary to adequately address today's market volatility.

Confirming Dave Spears and Brooksley Born will constitute a full operating commission. I know that this committee will move, as it always has, quickly in approving these nominations. I am hopeful that, unless some unforeseen issues arise, the Senate will act on these nominations before I leave the Senate—which I am not quite certain which date that will be. But I appreciate very much your allowing me to precede the other witnesses, and I am happy to be here with my Colleague, Pat Roberts who will join us in the Senate next year.

The CHAIRMAN. Well, thank you very much, Senator Dole. Each of these occasions in which Bob Dole appears, there is an enormous temptation once again to go back in history.

[Laughter.]

The CHAIRMAN. But let me just say, because I always fear this may be one of the final appearances, that it is great to have him right by my side.

Senator DOLE. Thank you.

The CHAIRMAN. He is the longest-serving Member of this committee, and this is his position right here on the committee. So it is great to have you this morning.

Senator DOLE. Thank you.

[The prepared statement of Senator Kasseebaum follows:]

**STATEMENT OF SENATOR NANCY LANDON KASSEBAUM**

It is a privilege for me to introduce my fellow Kansan, Dave Spears, to the Members of the Agriculture Committee. I am pleased that President Clinton has nominated Dave as a Commissioner for the Commodity Futures Trading Commission. I am confident that a review of his record will find him a credit to the Commission and well-qualified for the post.

Dave grew up on a farm in north central Kansas and still retains an active interest in production agriculture. Upon graduating with honors from Kansas State University, Dave spent 10 years working for CoBank, specializing in the financial firm's lending activities. For the past 7 years, Dave has been involved in agricultural legislation for Senator Dole as either a legislative assistant here in Washington or managing the Senator's offices back in the State of Kansas.

I feel Dave's work experience and character will serve him well as a Commissioner of the CFTC. The oversight role and customer protection function of this agency is needed now, as much as ever. The evolution of new trading instruments and derivatives, as well as their increased use by producers looking for commodity price protection will lead to many difficult problems for the Commission. I am confident that Dave has the knowledge, energy, and experience to deal thoughtfully with these problems, and I urge the committee to confirm his nomination.

The CHAIRMAN. I will recognize now the Distinguished Chairman of the House Agriculture Committee, who has come over to make a comment about one of the nominees. We are grateful to have you, Pat, in this situation, with the Farm bill completed and signup occurring. I once again pay tribute to you for your remarkable leadership.

**STATEMENT OF HON. PAT ROBERTS, A REPRESENTATIVE IN CONGRESS FROM KANSAS**

Mr. ROBERTS. Well, thank you, Mr. Chairman. This is the scene of the victory. I am a little surprised that Senator Harkin is not here with another amendment.

[Laughter.]

Mr. ROBERTS. Mr. Chairman, I appreciate the opportunity to come before you this morning to very highly and personally recommend to you and to the committee Mr. David Spears to be a commission of the CFTC. As has been stated by the Majority Leader, it is absolutely necessary that this nomination, and that of Ms. Born, too, be forwarded to the full Senate as soon as possible.

As you know, the Commission has been operating without its statutorily-mandated complement of five. The important work of the Commission requires five people to be on the Commission, especially in light of what appears to be some very innovative off-exchange instruments being used extensively out in farm country these days. That is probably the understatement of the morning.

Mr. Spears' qualifications, as an agriculture economist—and I might add that he is a one-handed economist—he does not say: "On the other hand"—backed up by years of Federal service as a Senate staffer and a district assistant to Senator Dole will be of great benefit to the regulatory program at the Commission.

I know that you are planning at least one additional hearing in a few weeks to look at possible changes to the act. I believe that David's experience and his background in economics and his farm background should certainly complement the other commissioners as they assist you in this oversight responsibility.

There is no need to make a lengthy statement. But I do have his resume here. On a personal note, I would like to point out that he

is an alumni of the fighting and ever-optimistic Wildcats of Kansas State University, with a degree in agriculture economics. As Senator Dole has pointed out, he continued to work in the agriculture lending arena at the Wichita Bank.

Then, Mr. Chairman, we are fond in Kansas of conducting listening tours. We do this every year in the first district with 66 counties. David has not only been with me on many of these tours, but also with Senator Dole when he tours 105 counties. I would tell you there is no other person that I know of in Kansas or, for that matter, all around the country who is better at sitting on the wagon tongue and listening to our producers when they have a problem, and then having the expertise to come up with an answer in regards to his knowledge of the farm program.

There is really no secret to farm program policy if you simply listen to the farmer and rancher. David comes from that background, and he does it extremely well. I would say that also in regard to the farm program that we have passed, *i.e.*, the Freedom to Farm plan, we have said many times, and you have said, Mr. Chairman, that now the farmer has 6 years of what I call a risk-management account. That is going to be exceedingly important on what kind of tools we provide the farmer to manage that risk. The CFTC will be hopefully his partner in this effort and his protector. So I cannot imagine anybody that has more expertise, more background, more talent, and certainly in terms of his hard work, to do this job, and certainly to do it well.

We had a CFTC commissioner from Kansas a few short years ago by the name of Kalo Heineman. Kalo was known as the producer's friend and commissioner on the CFTC. I think that kind of tradition and that kind of example, it seems to me, will serve us well with the nomination of David Spears. He is a personal friend. He has an outstanding family. He is very conscientious. His integrity is without question and he is a hard worker. Simply put, he is the right man, right time, right place, right job. I urge you to move in regards to the nomination. I thank you, Sir, for this opportunity.

The CHAIRMAN. Well, that is indeed a strong recommendation. We are honored by your presence. Thank you for coming this morning.

Mr. ROBERTS. Thank you, Mr. Chairman.

The CHAIRMAN. Let me mention that—and we appreciate very much witnesses, staff and audience accommodating themselves to this early hour of 8:45. The hearing was scheduled for 11 o'clock, and Senator Dianne Feinstein of California had planned to be here to introduce Brooksley Born. She sends her regrets that she could not make that shift in her schedule as rapidly as we made a shift in ours.

The reason for this shift, I think, as most Members know, is the services for Admiral Boorda will be held at 11 o'clock. Senators will be leaving the steps at 10:30. We do think this is a very important hearing. Therefore, we appreciate everybody accommodating the hour so that we could proceed.

Let me now, at this point, mention that Senator Nancy Landon Kassebaum has sent to the committee a strong statement of introduction for David Spears. I would like to put this in the record im-

mediately following the statement by Senator Dole and preceding that of Chairman Roberts.

And in sequence, I will now make a statement. In the event that the Distinguished Ranking Member, Senator Leahy, joins us at some point, his statement, of course, will be heard or it will be placed in the record.

[The prepared statement of Senator Leahy follows:]

#### STATEMENT OF SENATOR PATRICK J. LEAHY

Thank you Mr. Chairman. I am delighted to be here, with you, for the nomination hearing of Ms. Brooksley Born to be Chairperson of the CFTC and Mr. David Spears to be a Commissioner of the CFTC.

On this committee, we have the privilege to see many outstanding candidates for a variety of positions. This time is no different.

In particular, I would like to state how delighted I am to have Ms. Born before our committee. She is a particularly capable person.

I know that she will provide strong and capable leadership to the CFTC as it prepares to meet the challenges of rapid growth and technological innovation in the futures industry.

I would also like to point out how impressive it is to have before this committee an individual, like Ms. Born, who has spent a lifetime contributing to the public sector while at the same time pursuing a truly remarkable private sector law practice.

Ms. Born's pro-bono contributions to her community and country are vast. They include, among others, affiliations with the National Legal Aid and Defender Associations; the American Indian Lawyers' Training Program; the National Women's Law Center; the Historical Society of the District of Columbia; the Women's Bar Foundation; Friends of the National Zoo; Nature Conservancy; and the Squirrel Island Preservation Foundation (that I am pleased to note, contributes to forest preservation in New England).

We can all take a lesson from Ms. Born by realizing that there is room in everyone's life to contribute to our communities in a variety of capacities and functions.

This committee is also fortunate to have before it this morning, Mr. David Spears. I knew Mr. Spears in his capacity as Agricultural Legislative Assistant for Senator Dole.

Mr. Spears' attention to detail and concern for the issues that he was responsible for was and continues to be impressive. I am certain that in his new capacity as a CFTC Commissioner, we will be well served.

I thank the Chairman for his time, and look forward to completing this hearing, mark-up and final confirmation of these two nominees so that they each may begin to fulfill the duties of their new positions as quickly as possible.

#### STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM INDIANA

The CHAIRMAN. We do indeed meet today to consider the nominations of Ms. Brooksley Born to be chairman, and David Spears to be member of the Commodity Futures Trading Commission. The CFTC chairmanship has been vacant since early this year. The other CFTC seat has been vacant still longer. The failure to fill these vacancies left the Commission with only three members during a time when it has been confronted with a variety of issues, including, as we heard in the hearing that Chairman Roberts mentioned, the hedge-to-arrive contracts.

Meanwhile, another commissioner's term expires in June. We are grateful for these two nominations. We should consider them thoroughly, but expeditiously. Everyone on this committee knows the success story of the United States Futures industry. There is public interest in a viable, competitive futures exchange situation. Congress and the CFTC must balance the need for prudent regulation of these markets against the market's needs to be cost competitive

and efficient in a world where offshore and off-exchange alternatives are readily available for risk management.

A commission with confirmed leadership and a full complement of members is best able to strike that balance. This is why Senator Leahy and I wrote to the President in December urging quick action to replace former Chairman Mary Shapiro, whose departure was then imminent. Ms. Born is now nominated to the chairman-ship after a distinguished career in the law. She is a partner in the firm of Arnold and Porter, has been actively involved in a variety of issues dealing with the futures industry.

Most Members of the committee know David Spears well. He has often been in this room during his service as Senator Dole's legislative assistant for agriculture. He now manages Senator Dole's Kansas State office, has a financial background, namely 10 years of experience with Wichita Bank for Cooperatives.

We welcome warmly both of these nominees. Ms. Born, I understand you have members of your family with you. I would ask that you introduce them so that we may honor them, too, this morning.

Ms. BORN. Certainly. Mr. Chairman, with me today is my husband, Alex Bennett.

The CHAIRMAN. Good to have you here.

Ms. BORN. My daughter, Ariel Landau; and my two stepsons, Peter and Andrew Bennett.

The CHAIRMAN. We are delighted all of you are here. Thank you for coming. At this point, I would like to ask the two nominees to come to the table, Ms. Born at this seat and Mr. Spears to your right. I will ask you if you will proceed with opening statements that you may have, and then we will proceed to questions on my part and, if other Members join us, with them likewise.

Ms. Born.

#### **STATEMENT OF BROOKSLEY E. BORN, TO BE CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION**

Ms. BORN. Very good. Thank you very much, Mr. Chairman, Members of the committee. It is a great honor to appear before you as the President's nominee for chair of the Commodity Futures Trading Commission. If confirmed, I will strive to justify the President's confidence in me, and I will pledge to cooperate and work with this committee and the Congress.

The CFTC plays a vital role in overseeing the futures and options markets in the United States to ensure their integrity, to encourage their competitiveness, and to protect their users. I have been in private practice, in Washington, DC., for 30 years. My experience with the CFTC has been as a lawyer appearing before it, representing clients. As a lawyer, I appreciate the importance of the CFTC's role in protecting the public interest in these important markets.

I believe that its regulations should be designed narrowly to accomplish their purpose without undue burden, should be clearly stated so that the regulated persons understand the regulations well, and should be vigorously enforced. The U.S. futures markets are the most dynamic and innovative futures markets in the world. The markets permit business and agricultural interests

to shift unwanted risks and are looked to throughout the world for price information.

Federal regulation of the markets has permitted them to develop and to grow while assuring users of the markets' integrity and fair treatment. The U.S. regulatory scheme for futures markets has become a model for regulators in other countries, and the CFTC has been a leader in promoting appropriate regulation of futures markets throughout the world.

This role of the CFTC is critically important because of the global nature of many of these markets. Both domestically and globally, futures markets require careful regulatory oversight to protect the interest of their users and to identify risks of financial disruption.

CFTC regulation has adapted to changing needs for risk protection and to new developments in the markets. The enormous growth of the over-the-counter derivatives market, for example, has been facilitated by the CFTC's safe harbor position and exemptions for swaps and other off-exchange instruments. The CFTC will face regulatory challenges over the next several years as markets and technology grow and change. With the reduction of government agricultural subsidies and price stabilization, for example, agricultural interests may need increasingly to turn to the futures market to hedge their price risks.

If confirmed, I pledge to do my best to guide the Commission in its efforts to adapt its regulatory oversight to these changes. I also commit myself to working closely with this committee and the Congress, as well as with the Federal banking and securities regulators, the U.S. Department of Agriculture, State regulators, and foreign regulatory authorities.

Thank you very much.

The CHAIRMAN. Thank you very much, Ms. Born, for that statement, likewise with your pledges to work closely with the committee, to appear here as we need to go into oversight procedures, and to try to strengthen the industry jointly, as we have attempted to do.

Mr. Spears, do you have an opening statement?

**STATEMENT OF DAVID D. SPEARS, TO BE COMMISSIONER,  
COMMODITY FUTURES TRADING COMMISSION**

Mr. SPEARS. Yes, Sir. Mr. Chairman, first I want to make a brief comment. Unfortunately, my family could not be here today. My wife Pam is expecting our second child, and is in the last month of her pregnancy.

The CHAIRMAN. That is a good reason why they could not be here.

Mr. SPEARS. . . . and in the interest of *decorum*, I left my 7-year-old daughter Kaitlin, at home, as well. However, I do want to thank the many friends and Colleagues who are here today to support me. I truly appreciate it. As you commented, I have been in this room many times, at this table many times, but never in this capacity. I am truly honored to be here, to be the nominee for the Commodity Futures Trading Commission, along with Brooksley Born.

I also want to publicly thank Senator Dole for his very kind remarks. As you know, this town, as well as the State of Kansas, is

going to miss greatly what he has contributed to the U.S. Senate. I would also like to thank Senator Kassebaum for her statement as well as thank Congressman Roberts for taking time out of his busy schedule to come over here today and make his very kind and warm remarks. I am honored to have these Members serve as my Senators and my Congressman. It has been a pleasure working for and with them.

I would like to begin by explaining how I believe my background has qualified me to be commissioner at the Commodity Futures Trading Commission. However, Senator Dole and Congressman Roberts pretty much covered my background. I could not say it any better than they did. So what I believe I will do, Sir, is summarize my statement and then submit the complete statement for the record, if that would be OK.

As they commented, I was raised on a farm. I went to school at Kansas State University, graduated with a degree in agriculture economics, spent 10 years in agriculture financing, working primarily with agribusinesses, as well as with producers and ranchers. I feel that work experience has made me sensitive to the farmers' and ranchers' reliance on the futures markets for price discovery and hedging in agriculture commodities.

This reliance is particularly important this year, as you know, Sir, with the commodity prices and the volatility in the markets. Farmers and ranchers already have a number of marketing tools they can use. However, as we move forward into the next century, farmers and ranchers will need more marketing tools. These marketing tools will become more sophisticated, more complicated and more complex.

It will be important for farmers and ranchers to understand these tools. As you know, risk management is a very important element of any successful business, and farming is a serious business. I am deeply aware of the CFTC's obligation to ensure honest and fair markets in the commodity futures trade. I am committed to helping the CFTC fulfill this obligation.

My 10 years of experience in financial banking has also prepared me to master the intricacies of financial futures and off-exchange derivatives. As you know, these markets become more complex every day. I also understand as a businessman that burdensome government regulations can be overbearing. I want to address the concerns of overly burdensome government regulations, but at the same time keep in mind that CFTC is a regulatory agency and that the integrity of the markets and maintaining customer confidence is of utmost importance.

During my 7 years working for Senator Dole, I gained a deep appreciation for the broad and complex nature of the issues confronting this committee and Members of the Senate. I understand that good information is essential in making good decisions, and that good relations between Congress and the CFTC can help both sides better serve the American people.

If confirmed as a commissioner, I will work diligently to provide information, encourage cooperation and help the Commission achieve its goals in working with Congress. I want to thank you very much, and I will be happy to try to address any questions you might have.

The CHAIRMAN. Thank you very much, Mr. Spears. Let me ask both of you this question, something for the record. Do you promise that, if confirmed to the position for which you have been nominated, you will appear if requested to testify before any duly constituted committee of Congress?

Ms. BORN. I do.

Mr. SPEARS. I do.

The CHAIRMAN. Both of you have affirmed that you do. Let me ask two questions, first of all of you, Ms. Born, and then a couple of questions for you, Mr. Spears, that come from press accounts and various elements of criticism that I simply want to get answers on the record before we get into technical questions about the CFTC.

Ms. Born, please describe the legal work you did for the German firm, Metallgesellschaft, and during what period of time did you represent the firm? Did any of the work deal with areas that were the subject of enforcement action by the CFTC or other Federal agencies?

Ms. BORN. Most recently, I have represented a man named W. Arthur Benson, who was the former president of a subsidiary of Metallgesellschaft. He was the former president of MG Refining and Marketing. I represented him during 1995, when there was a CFTC Enforcement Division investigation of Metallgesellschaft and the subsidiaries and Mr. Benson. That investigation terminated last summer with a settlement agreement that was entered into by two Metallgesellschaft subsidiaries.

I believe that the matter is over and no action was taken against my client. I certainly propose to recuse myself, as the rules require, from any discussion of the substance of that matter or any other matters involving Metallgesellschaft or Mr. Benson for the time period required by statute.

The CHAIRMAN. Is there anything in that representation—and this is the point of my question, obviously—that would lead to suppression or accusation of any conflict of interest with regard to CFTC and the duties that you now aspire to?

Ms. BORN. Not that I am aware of, as long as I recuse myself from specific matters involving Mr. Benson or Metallgesellschaft during the first year of my term as chair. I should also mention, Mr. Chairman, that I have a vague recollection of some time early in my practice, perhaps during the 1970s, representing Metallgesellschaft in some advice on some U.S.-related matters. I do not remember the substance of that representation. It was very slight. Metallgesellschaft had, for some time, been a client of the firm worked on by other partners in the firm.

The CHAIRMAN. Very well. We will leave the record open. The point of the question is not entrapment, it is information to complete the record, so that you have an opportunity to make clear that situation.

The second question deals with press accounts that a Distinguished Colleague of ours in the Senate, Senator Faircloth of North Carolina, is concerned about your close friendship with First Lady Hillary Clinton, and specifically commodity transactions that she may have had in the past and that may be a subject of public inquiry. This information is published by Reuters, and Jim Hyland,

identified as an aide of Senator Faircloth, in fact indicates specifically and publicly the concern. Can you describe to the committee your relationship with the First Lady, with any of her concerns—that is, the First Lady's—about commodity trading or any other way in which that friendship or her trading might affect your service?

Ms. BORN. Certainly, Mr. Chairman. My association with the First Lady is essentially a professional one that evolved from my American Bar Association activities. For a number of years, I have been active in the ABA. In the late 1980's, I think 1988, the First Lady was appointed chair of a new ABA entity, the ABA Commission on Women in the Profession. I met her for the first time at an ABA meeting, either an annual meeting or a mid-year meeting.

For several years thereafter, until she became active in the 1992 Presidential campaign activities, she would attend mid-year and annual meetings of the ABA, and I would see her there. Since the election and since she moved to Washington, I have only seen the First Lady at dinners or luncheons where she was the speaker and I went through a receiving line.

The only other occasion I can remember is an occasion where the White House invited the Lawyers' Committee for Civil Rights Under Law to celebrate its 30th anniversary at the White House. The board of that entity was invited to the White House for that celebration. I went through a receiving line and saw the First Lady then.

The CHAIRMAN. Thank you.

Ms. BORN. Let me just comment in terms of her futures trading. My only information about that is what I have read in the media. I believe that happened many years ago, but it has been more recently reported in the media.

The CHAIRMAN. Mr. Spears, in my opening statement, I mentioned your 10 years of banking experience.

Mr. SPEARS. Yes, Sir.

The CHAIRMAN. But a logical question to you is, "What, in your background, qualifies you for this position?" For those in America who are wondering why you have been nominated to this board, can you describe your qualifications and your interest, what makes you an appropriate member of the Board?"

Mr. SPEARS. OK. Thank you, Sir. I believe, first and foremost, the combination of my agriculture and financial background, provides me the skills and the background to serve effectively in the role as commissioner. As I mentioned earlier, I was raised on a diversified farming operation in north-central Kansas. I spent 10 years in agriculture finance providing financing to agribusinesses, as well as working with producers and ranchers. Most recently, I have spent 7 years working with agriculture policy, trade policy, and other issues, as a legislative assistant to Senator Dole.

So, I feel a combination of my ag background and financial background, along with Midwestern common sense and a strong work ethic are the basic components that qualify me to be a Commodity Futures Trading Commissioner.

The CHAIRMAN. In your experience in lending, did you advise individual farmers to use futures options related contracts for hedging? Can you recall your own feelings with regard to those instruments?

Mr. SPEARS. Well, my personal feelings are that they are an important tool that farmers can use in the marketing of their crop. Part of risk management—as I touched on in my statement. Risk management is an essential element in any successful business. I believe, as you have stated many times Senator, that farming is a business, as well. I think that if farmers can use these tools to assist in their risk management and provide them additional options besides just cash markets, it is something that they should do.

During my 10 years in financing, my primary activity was working with agribusinesses and indirectly with producers and ranchers. So I was not in a direct capacity to advise individual farmers to use futures.

The CHAIRMAN. Let me ask this question of both of you, and then I will yield to Senator Conrad for questions. During our hearing, our oversight hearing on CFTC matters last week, we had broad discussion of two situations, one, the winding up of the wheat contract March 20 at the Chicago Board of Trade. As it was pointed out this very day of your hearing, we reach another such moment at approximately noon, Chicago time, with press assurances that the open contracts are maybe one-fifth the size that they were in March, but nevertheless, some curiosity, certainly, as to whether everybody is on top of the situation, and with comment made here publicly that some persons may be cited for rules violations, although those investigations are pending.

So that was one predicament. It comes perhaps from the volatility of the markets, from the price-finding mechanism with short supplies, perhaps a number of aspects, or, as we were raising the question, was CFTC on top of the situation? Were Chicago Board of Trade people on top of it? And their meeting, their board meeting, really the day before, with significant reforms was very constructive and timely. Maybe we all began to focus on this.

Now, the other thing we were focusing on were these situations of forward contracts and the hedge-to-arrive business described in many manifestations. This will not go away so easily and is likely to be in front of this committee in various forms. As we saw, the buck has been passed along literally, as the exchange has affirmed that they were whole and that their rules made sure they got paid. But at some stage, country elevators are under pressure, maybe even co-op banks, clearly various farmers who are engaged in these practices, as we heard direct testimony.

So the question that I have to ask both of you is, "You will have to make some judgments, and you may not have a final determination in your mind, but should CFTC legalize agricultural trade options that are now banned, what should be the attitude with regard to this ban or to the hedge-to-arrive situation, as it pertains to CFTC?" There clearly is question as to what the jurisdiction is now, and some would question whether there should be any jurisdiction—ever. Yet, I ask each of you for a curbstone opinion today of how we should proceed.

Ms. BORN. Well, with respect to the hedge-to-arrive contracts, I think it is very important for the Commission to carefully look into that situation. Obviously, those contracts are right now causing a great deal of financial distress to a number of farmers and some grain elevators. I think that it was a beneficial first step that the Commission's Division of Economic Analysis last week made it clear that people in financial distress in these contracts could agree between themselves to enter into windup agreements that involve cash settlements without endangering the contract with respect to the legal analysis of whether it is an off-exchange futures or forbidden trade option, or whether it is a legitimate forward contract.

That is a first step only, I think. I think it is extremely important that the CFTC make a careful evaluation of these contracts and of the difficulties that they are causing to see if the contracts are illegal or not and to take appropriate action if they are illegal. If they are not, then I think consideration should be given to whether any additional regulatory powers are needed.

With respect to trade options in the agricultural area, as you know, the Commission has been considering whether to authorize those for the first time. With the Farm bill and the resultant reduction in price stabilization and subsidies, there are going to be needs for greater kinds of risk management tools by agricultural producers. They will face greater price risks.

Clearly, agricultural trade options are one possibility. I think they have to be carefully analyzed to see whether the benefits of individually crafted contracts like trade options offset the potential risks. Obviously, education of the users of derivatives, whether they are on-exchange or off-exchange derivatives, is extremely important. I was pleased to see that the Farm bill calls for the Agriculture Department to have an educational program for farmers about the use of futures and options. Certainly, if confirmed, I would hope that the CFTC would work very closely with the Agriculture Department in ensuring adequate education for agricultural users of the markets.

With respect to the volatility in the markets and the March wheat close, I was glad to see that the CFTC is carefully investigating what happened at the close of the March wheat contract. I am also aware that the CBOT has announced that they are proceeding against some firms and individuals for trading violations. I think it is particularly important for the Commission to watch the close today and in July to make sure we are going to have an orderly close.

I was also pleased to see that CBOT was taking some actions to improve their trading operations in the agricultural markets in light of the increased volume. I think all those are steps in the right direction.

The CHAIRMAN. Thank you. Mr. Spears.

Mr. SPEARS. Mr. Chairman, let me start by saying that I would agree with the majority of what Ms. Born already stated in her response to the question. I think she answered the question very well. But let me also add, I have reviewed the testimony from the hearing last week. I concur that the policy statement the Commission's Division of Economic Analysis made was also a useful step in reviewing that process.

I feel, as we go through this, that there needs to be a sector-by-sector review, because this certainly impacts many sectors in the financial as well as the agriculture communities. So I think we need to move through it cautiously. But I also consider it a priority, and pledge that I will actively review and monitor the issue closely as a commissioner.

In regard to the agriculture trade options, I think the roundtable the Chairman had last December was a good first step in addressing a lot of producers, and Members' concerns. I think we also should move cautiously in regard to those, as well.

The CHAIRMAN. Thank you.

Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman. I appreciate your holding this hearing so that we can take action on these nominees. I have had a chance to meet with both of the nominees. I was very impressed with Ms. Born's background. I was especially impressed by her choice of college to attend. That predisposed me to be favorable. As I looked over her background, I thought . . . *this is someone who is superbly prepared to serve as head of the CFTC.* I think it is always a challenging time at the CFTC. It always seems to be the center of some controversy, whether it is the March 20th event or whether it is hedge-to-arrive, or whether it is a question of merging with the SEC, these are always issues that come up, these types of issues. I am glad to see someone of her professional background receive the nomination.

With respect to Mr. Spears, my office and my staff have had a chance to work with him in the past. Our experience has been extremely good with Mr. Spears. I think he is somebody who is knowledgeable, who is highly responsible, and somebody who cares a good deal about these markets, and who I think will do a very fine job in this position. I am very pleased to support his nomination, as well.

I am concerned about several things. I am concerned about possible merger with the SEC. We have always believed that if such a merger were to occur, we would probably find ourselves at the end of some long, dark hallway at the SEC, that the SEC really has a different mission and in regulating different markets, and that it is really not in the interest of agricultural markets to be merged with that entity. I would be interested in the reactions of the two nominees.

Ms. Born.

Ms. BORN. Well, Senator, I agree with your analysis. I have not become convinced that there would be any significant cost savings or efficiencies gained by merger, in light of the very different nature of the two markets that the agencies are regulating and the very different kinds of regulatory schemes that each agency is responsible for.

It is my impression that the SEC and the CFTC do not have any major jurisdictional issues between them at this time and are co-operating very effectively through the President's Working Group on Financial Markets and otherwise and that there is not a need for a merger at this time. I also think that there could be some disadvantages to merger, as you mentioned—perhaps less regulation and attention to the futures and options markets. Also, of course,

any significant merger like that would necessarily disrupt the regulatory process to some extent. There would be a down side to that.

Senator CONRAD. Mr. Spears.

Mr. SPEARS. Senator, I also share your concerns regarding the future of such a merger. I concur with your analysis, as well. I believe that before we proceed and before I would favor that merger, I would have to be convinced, first and foremost, that there would be efficiencies gained. Second, and equally important, I would want some assurance that the concerns that you noted would be addressed, in that farmers and ranchers would still have a voice, producers would have an outlet that they could go to, which CFTC provides currently. Third, that you maintain the integrity of the markets and customer confidence, in that we cannot be lost, as you put it, down at the end of some hall. So I share your concerns.

Senator CONRAD. I appreciate that. A couple of other quick points, Mr. Chairman, if I might. With respect to the March 20th close, I asked representatives of the exchange at our hearing, what does it say to you, what concern does it raise, when the price moves from \$5.35 to \$7.50 in a matter of minutes? And, basically, their answer was, well, they did not have a concern, that everything had gone appropriately.

To me, that is contradicted by the fact that there are preliminary charges pending, and I emphasize those are preliminary. I emphasize the investigation is not complete, as did the Chairman. But the fact is, somebody thinks something is wrong or we would not have some preliminary charge pending.

I would just like to ask the two of you, you see that kind of price movement—I mean, you know the markets over time, you have some rough idea of movements. To see price move from \$5.35 a bushel—I think that is approximately correct—to \$7.50 a bushel in a matter of minutes, at least to me, sends up a warning flag. That tells me something better be looked at; and, of course, that is what the exchanges have done. They have looked. They have conducted an investigation. I applaud them for that.

What would it say to you, Ms. Born?

Ms. BORN. Well, I agree that that definitely is a warning sign that something may well be wrong, something inappropriate may have happened; and for that reason, I think it is a fact situation that needs to be investigated, very carefully; not only by the exchange, but also by the CFTC, to see if there were any violations of laws or regulations involved. I understand that acting chairman Tull announced last week that there is an investigation going on.

Senator CONRAD. I appreciate that. Mr. Spears.

Mr. SPEARS. Well, I am, too, I guess the word I would use would be troubled by that. I have read the accounts of the activity of that day numerous times, trying to figure out what took place. It makes for some very interesting reading if you follow the time sequence regarding what happened there. I remain perplexed—quite honestly; I am encouraged by the Commission's investigation, and I believe it should be looked into further.

Senator CONRAD. All right. Hedge-to-arrive; this is becoming an increasing concern. We have been contacted by elevators that believe they may be on the brink of failure because of hedge-to-arrive. We have also been in contact with farmers who tell us they are in

a precarious position, understandably so, with the market jumping as this one has. I think you have responded adequately to that question to the Chairman.

I just wanted to indicate my concern, as well. I hope very much that the CFTC does not shrink from any regulatory role. You know, we have this saying around here: "If it walks like a duck, if it quacks like a duck, *it is probably a duck.*" I think that may be the case with hedge-to-arrive arrangements. They look an awful lot like a futures to me.

One other thing that I think requires mention, and that is the cattle markets. With prices plunging, you know, it is an anomaly. Here we have in the wheat markets, corn market, prices skyrocketing with short supplies; the cattle market, with a whole series of things affecting us there, price is plunging. I tell you, you want to see financial distress. I know, Mr. Spears, you are fully aware of this, being in contact with producers across the State of Kansas. Deep concern on the part of producers in my State that there is overconcentration in the meat-packing industry and that markets are being disrupted as a result, that there is the potential here for manipulation.

I would just like to ask both the nominees how they view this question and how they would approach it?

Ms. Born.

Ms. BORN. Well, I think, again, market surveillance is extremely important in all the markets and certainly in the cattle futures markets today. I know that the Commission's staff has investigated whether or not there has been any inappropriate behavior in those markets in the past, and has not found any violations of the laws we apply.

I also understand that there is some ongoing investigation by the antitrust division of the Justice Department as to the degree of concentration in that market.

Senator CONRAD. Mr. Spears.

Mr. SPEARS. As you commented, Senator, I fully understand this concern from visiting with producers and ranchers. I know the phone has rung numerous times over the past couple of years and especially in the past couple of months regarding this issue. I know that the Commission has been very sensitive to the issue, and as Ms. Born commented, they have conducted research and been active in a number of investigations.

I believe the Commission can continue to play a role in monitoring the situation—and should. That certainly would be an issue that I would monitor personally, and would report to you at any time regarding any activity that I feel is inappropriate.

Senator CONRAD. I appreciate that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Conrad has been faithful in all of the CFTC hearings over the years and once again is indefatigable in his interest. I would comment that the Distinguished Ranking Member of the committee, Senator Leahy, from the beginning of his Senate service, has been especially helpful in the oversight procedures; and I know will continue to be so.

All of us look forward to visiting with both of you frequently—which will be helpful in our duties, as we go into oversight. Senator

Dole has brought to my attention a letter<sup>1</sup> written to me on May 20 by a large number of agricultural organizations supporting the nomination of David Spears.

The CHAIRMAN. I appreciate your coming this morning. As has been indicated by all Members who have appeared, we hope for quick action by the committee and by the Senate as a whole so that we can, in fact, have a full complement. You have been most forthcoming in your answers. I will leave the record open for 24 hours in the event that Senators who were not able to attend the hearing because of our change of time will have a chance. If you would respond quickly to those inquiries, that will complete the record.

The hearing is adjourned.

[Whereupon, at 9:40 a.m., the committee adjourned, subject to the call of the Chair.]

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<sup>1</sup>All communications received by the committee relative to Ms. Born's and Mr. Spears' confirmations, if not printed in this publication, are retained in committee files.

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## A P P E N D I X

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### PREPARED STATEMENTS

#### **Brooksley E. Born**

Mr. Chairman and Members of the committee, it is a great honor for me to appear before you as the President's nominee to chair the Commodity Futures Trading Commission. If confirmed, I will strive to justify the President's confidence in me, and I pledge to work closely with this committee and the Congress.

The CFTC plays a vital role in overseeing the futures and options markets in the United States to ensure their integrity, to encourage their competitiveness, and to protect their users. I have been in the private practice of law in Washington for 30 years, and my experience with the CFTC has been as a lawyer representing clients before it. As a lawyer, I appreciate the importance of the CFTC's role in protecting the public interest in these markets. I believe that its regulations should be designed narrowly to accomplish their purpose without undue burden, should be clearly stated so that the regulated parties understand them well, and should be vigorously enforced.

The U.S. futures markets are the most dynamic and innovative markets in the world. The markets permit business and agricultural interests to shift unwanted risks and are looked to throughout the world for price information. Federal regulation of the markets has permitted them to develop and to grow while assuring users of the markets' integrity and fair treatment.

The U.S. regulatory scheme has become a model for regulators in other countries, and the CFTC has been a leader in promoting appropriate regulation of futures markets throughout the world. This role of the CFTC is critically important because of the global nature of many of the markets. Both domestically and globally, futures markets require careful regulatory oversight to protect the interests of users and to identify risks of financial disruptions.

CFTC regulation has adapted to changing needs for risk protection and to new developments in the markets. The enormous growth of the over-the-counter derivatives market among sophisticated large users has been facilitated by the CFTC's safe harbor and exemptions for swaps and certain other instruments.

The CFTC will face new regulatory challenges over the next several years as markets and technology grow and change. With the reduction of government agricultural subsidies and price stabilization, for example, agricultural interests may need increasingly to turn to the futures markets to hedge their price risks.

If confirmed, I pledge to do my best to guide the Commission in its efforts to adapt its regulatory oversight to these changes. I also commit myself to working closely with this committee and the Congress as well as with Federal banking and securities regulators, the U.S. Department of Agriculture, State regulators, and foreign regulatory authorities.

Thank you very much.

**David D. Spears**

Mr. Chairman and Members of the committee. I am honored to come before you today, along with Brooksley Born, as a nominee to serve on the Commodity Futures Trading Commission.

I would like to thank Senator Dole and Congressman Roberts for taking time out of their extremely busy schedules to introduce me to the committee today. I am honored by their presence. I would also like to thank Senator Kasseebaum for her support. As a native Kansan, I am proud to have such a highly respected delegation. We will greatly miss having Senators Dole and Kasseebaum represent us in Congress.

I would like to begin by explaining how I believe my background has prepared me well to be an effective CFTC Commissioner.

I was raised on a farm and ranch in north central Kansas, and I am still active in farming operations. After graduating from Kansas State University with a degree in agricultural economics, I worked for 10 years for the Wichita Bank of Cooperatives in the lending division. In 1989, I became a legislative assistant to Senator Bob Dole, with responsibility for agriculture and trade issues. I worked for Senator Dole in this capacity until 1992, when I returned to Kansas to become his State director.

My background and work experience have made me acutely sensitive to farmers' and ranchers' reliance on the futures markets for price discovery and hedging in agricultural commodities. This reliance is particularly important this year, as commodity prices have become more volatile. There are already early signs that conventional marketing tools may need sharpening, and that mechanisms to manage risks will need to keep pace. Risk management is a necessary element of a successful business, and agriculture is a business.

I am deeply aware of the CFTC's obligation to ensure honest and fair markets in the commodity futures trade. I am committed to helping the CFTC fulfill this obligation.

My experience as a banker has prepared me well to master the intricacies of financial futures and off-exchange derivatives. These instruments present some of the Commission's biggest challenges. As the only financial regulator responsible for regulating derivative instruments, the CFTC will continue to play a leadership role in these issues. I look forward to being actively involved in this area.

As a businessman, I understand that government regulation can be burdensome. I want to listen to the concerns of the exchanges, the FCM community and others to see if the CFTC can further streamline or eliminate unnecessary regulatory requirements. Be assured, however, that I do not support changes to the regulatory structure that would in any way undermine the core protections that are central to the financial integrity of the futures markets.

During my 7 years with Senator Dole, I gained a deep appreciation for the broad and complex nature of the issues confronting each Member of this committee on a daily basis. I understand that good information is essential to making good decisions. Good relations between Congress and the CFTC help both sides to serve the American people better. If confirmed as a Commissioner, I will work diligently to provide information, encourage cooperation, and to help the Commission achieve its goals.

Thank you very much. I will be happy to answer any questions that you may have.

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## BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Brooksley Elizabeth Born  
Brooksley Elizabeth Landau (former name)

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Home: 2319 Tracy Place, N.W.  
Washington, DC 20008  
202-462-3676

Office: 555 Twelfth Street, N.W.  
Washington, DC 20004  
202-942-5832

3. Date and place of birth.

August 27, 1940  
San Francisco, CA

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Alexander Elliot Bennett  
Attorney  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, DC 20004

5. Education: List each college and graduate or professional school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Stanford University  
Stanford, CA  
September 1957-June 1961  
A.B. English Literature (minor: German) 1964

Stanford Law School  
Stanford, CA  
September 1961-June 1964  
LL.B 1964 (later converted to J.D.)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college; include a title and brief job description.

Neyhart & Grodin  
San Francisco, CA  
Law Clerk, Summer 1962  
Conducted legal research for a law firm.

Arnold & Porter  
Washington, DC  
Associate, 1965-1967, 1968-1973  
Partner, 1974-present  
Associate and then partner in a law firm.

Harvard Law School  
Cambridge, MA  
Legal Researcher, 1967-1968  
Conducted legal research for a professor.

Columbus School of Law  
Catholic University of America  
Washington, DC  
Lecturer at Law, 1972-1974  
Taught seminar.

Georgetown University Law Center  
Washington, DC  
Adjunct Professor, 1972-1973  
Taught seminar.

In addition, I have served in an unpaid capacity as an officer or member of the board of the following non-profit organizations:

National Legal Aid and Defender Association  
Washington, DC  
Board of Directors, 1971-1979

American Indian Lawyers' Training Program  
Board of Directors, 1974-1978

District of Columbia Bar  
Washington, DC  
Secretary, 1975-1976  
Board of Governors, 1976-1979

Center for Law and Social Policy  
Washington, DC  
Board of Trustees, 1977-present

Lawyers' Committee for Civil Rights Under Law  
Washington, DC  
Board of Trustees, 1978-1993  
Board of Directors, 1993-present

National Women's Law Center  
Washington, DC  
Chair, Board of Directors, 1981-present

Women's Bar Foundation  
Washington, DC  
Board of Trustees, 1981-1986

American Judiciature Society  
Chicago, IL  
Board of Directors, 1984-1988

Stanford Law Society of Washington, DC  
Board of Directors, late 1980's

American Bar Foundation  
Chicago, IL  
Board of Directors, 1989-present

American Bar Association  
Chicago, IL  
Board of Governors, 1990-1993

Historical Society of the District of Columbia  
Circuit  
Washington, DC  
Board of Directors, 1990-present

Squirrel Island Preservation Foundation  
Squirrel Island, ME  
Board of Directors and Secretary, 1991-present

Arnold & Porter Foundation  
Washington, DC  
Board of Directors, 1991-present

Washington Lawyers' Committee for Civil Rights  
and Urban Affairs  
Washington, DC  
Board of Directors, 1992-present

Consortium for the National Equal Justice  
Library  
Washington, DC  
Board of Directors, 1992-present

Washington Legal Clinic for the Homeless  
Washington, DC  
Board of Directors, 1993-present

Southwestern Legal Foundation  
Dallas, TX  
Board of Trustees, 1993-present

I am or was a partner or limited partner in the  
following real estate investment partnerships:

A&P N Street Associates  
Washington, DC  
Partner, 1981-present

A&P Realty Associates  
Washington, DC  
Partner, 1982-present

A&P Buttonwood Associates  
Washington, DC  
Partner, 1983-1993

A&P Seven Corners Associates  
Washington, DC  
Partner, 1983-present

A&P Winterset Associates  
Washington, DC  
Partner, 1984-1993

JMB/245 Park Avenue Associates Limited  
Chicago, IL  
Limited Partner, 1984-present

Winthrop Miami Associates Limited Partnership  
Boston, MA  
Limited Partner, 1992-present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Government Service: State (chronologically) your government service or public offices you have held, including the terms of service grade levels and whether such positions were elected or appointed.

U.S. Social Security Administration  
San Francisco, CA  
File Clerk, Summer 1961  
Appointed

U.S. Court of Appeals for the D.C. Circuit  
Washington, DC  
Law Clerk, 1964-1965  
Appointed

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you received and believe would be of interest to the Committee.

Order of the Coif, 1964

10. Political Affiliation: The statute creating the Commodity Futures Trading Commission requires that no more than three members be from the same political party. List your current political party registration or affiliation.

Democratic Party

11. Other Memberships: List all organizations to which you belong, excluding religious organizations.

In addition to the organizations listed in response to question 6, I belong to the following organizations:

State Bar of California (inactive status)  
American Law Institute  
Stanford Law School Board of Visitors  
Women's Legal Defense Fund  
American Association of Retired Persons  
Friends of the National Zoo  
Resident Associate Program of the Smithsonian  
Institution  
Audubon Naturalist Society  
Squirrel Island Boating Association  
Ladies Improvement Association of Squirrel  
Island  
National Museum of Women in the Arts  
Nature Conservancy

American Civil Liberties Union  
WETA  
Women's Bar Association of the District of Columbia  
National Association of Women Lawyers  
Abraham Lincoln High School Alumni Association  
American Museum of Natural History  
Stanford Alumni Association  
National Museum of the American Indian  
National Audubon Society  
The Sierra Club  
League of Women Voters of the District of Columbia  
League of Women Voters of the United States  
Women's Forum of Washington, DC  
Sheraton Kalorama Neighborhood Association  
Sheraton Kalorama Historical Association  
Emily's List

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials (including published speeches) you have written. Please include on this list published materials on which you are listed as the principal editor. It would be helpful to the Committee if you could provide one copy of all published material that may not be readily available. Also, to the maximum extent practicable, please supply a copy of all unpublished speeches you made during the past five years on issues involving agriculture, nutrition, forestry or commodity futures policy or related matters.

"Conference on the 30th Anniversary of the United States Supreme Court's Decision in Gideon v. Wainwright: Gideon and the Public Service Role of Lawyers in Advancing Equal Justice," 43 American University L. Rev. 1, 11 (1993) (reprint of my remarks along with those of others);

"Memories of Rights and Responsibilities," 18 Human Rights 35 (A.B.A. 1991) (author of a small part of the article);

"Serving the Poor," A.B.A. Journal 144 (March 1, 1988);

"The First 20 Years," Human Rights 37 (A.B.A. 1985?) (author of a small part of the article);

"The A.B.A. Should Continue to Oppose Discrimination by Business Clubs," A.B.A. Journal 1024 (August 1982);

"The Local Economic Development Corporation, as Broker-Sponsor for Local Economic Development" and "Organizing a Local Economic Development Corporation as a Non-profit Membership Corporation," The Local Economic Development Corporation -- Legal and Financial Guidelines (Economic Development Administration, U.S. Department of Commerce 1970) (co-author);

"Die Luft das Freiheit Weht -- Stanford-in-Deutschland, Zweite Gruppe," Stanford Mosaic 238 (Stanford University Press 1964);

"California Rejects Tort Action for Fear," 15 Stanford Law Review 740 (1963).

As President of Stanford Law Review, I was the principal editor of 16 Stanford Law Review (1963-1964). During the 1960-1961 school year I was the editor of The Bridge, an undergraduate magazine on international relations published by Stanford University.

In addition, I have written small parts of various American Bar Association publications. For example, I wrote the preface to an A.B.A. publication entitled Civil Justice -- An Agenda for the 1990's (A.B.A. 1991) and Reports of the Chair in Human Rights magazine, the publication of the A.B.A. Section of Individual Rights and Responsibilities, during the year that I chaired the Section, September 1977 to August 1978. I have also written prefaces to the annual reports of the A.B.A.'s Fund for Justice and Education during the period 1993 to the present during which I have chaired the A.B.A.'s Council of the Fund for Justice and Education (formerly the Resource Development Council).

13. Health: What is the present state of your health?

Excellent.

## FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Have you severed all connections with your immediate past private sector employers, business firms, associations, and/or organizations?

No. I intend to resign my partnership in the law firm of Arnold & Porter upon confirmation and will also resign from the Board of the Arnold & Porter Foundation.

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, incompletely completed contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

After my resignation from Arnold & Porter and pursuant to Arnold & Porter's partnership agreement and customary practice with respect to resigning partners, I will receive the following payments from the Firm:

- (1) My Capital A Account balance in the amount of \$51,200 will be paid in a lump sum within thirty days of my resignation.
- (2) My partnership share of the Firm's 1996 profits pro rated to the date of my resignation will be paid in several payments with the final payments occurring in January and April 1997. The amount will be based upon the date of my resignation and the amount of the Firm's profits for 1996.
- (3) I will receive two retirement payments in the amount of \$148,432.63 each, one upon my resignation and the second in January 1997.
- (4) My Capital C Account balance in the amount of \$42,435.44 will be paid in two equal installments, one within thirty days of my seventieth birthday or my death and the second one year later.

3. Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch? (If yes, please give a brief description including location, size and type of operation.)

No.

4. If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during your service with the government? (If so, explain.)

No.

5. Do you have any plans to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations after completing government service? (If yes, give details.)

No.

6. Has anyone made a commitment to employ you or retain your services in any capacity after you leave government service? (If yes, please specify.)

No.

7. Identify all investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated.

I believe that it is unlikely that my relationships will cause conflicts of interest. In order to avoid any conflict of interest, I plan during my tenure as Chair of the CFTC to recuse myself from particular matters which, to my knowledge, involve any of the following persons or entities:

Arnold & Porter;  
A&P Realty Associates;  
A&P Seven Corners Associates;  
A&P N Street Associates;  
American Bar Foundation;  
Historical Society of the District of Columbia  
Circuit;  
National Women's Law Center;

Center for Law and Social Policy;  
Lawyers' Committee for Civil Rights Under Law;  
Washington Lawyers' Committee for Civil Rights  
and Urban Affairs;  
Washington Legal Clinic for the Homeless;  
Consortium for the National Equal Justice  
Library;  
Southwestern Legal Foundation;  
Squirrel Island Preservation Foundation.

I also plan to recuse myself for one year from particular matters involving specific parties which, to my knowledge, involve the Arnold & Porter Foundation or clients I have represented personally during the past year. In addition, I plan to recuse myself from particular matters involving specific parties which, to my knowledge, involve any client personally represented by my spouse during the time his representation continues.

8. Have you ever received a government guaranteed student loan? If so, has it been repaid?

No.

9. If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

See my answer to number 7 above. I also plan to consult and be guided by the advice of the Commission's Designated Agency Ethics Official or other appropriate Commission ethics personnel as to conflicts of interest.



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

May 14, 1996

The Honorable Richard G. Lugar  
Chairman  
Committee on Agriculture, Nutrition  
and Forestry  
United States Senate  
Washington, DC 20510-6000

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Brooksley E. Born, who has been nominated by President Clinton for the position of Chairman of the Commodity Futures Trading Commission (CFTC).

We have reviewed the report and have also obtained advice from the CFTC concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed are copies of a letter dated May 6, 1996, from the ethics official of the CFTC and a memorandum, dated May 9, 1996, from Ms. Born, which discuss Ms. Born's ethics agreements with respect to withdrawal from her law firm, recusals, and certain other matters.

Based thereon, we believe that Ms. Born is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

*Stephen D. Potts*  
Stephen D. Potts  
Director

Enclosures



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
 1155 21st Street, NW, Washington, DC 20581  
 Telephone: (202) 418-5120  
 Facsimile: (202) 418-5524

OFFICE OF  
 GENERAL COUNSEL

May 6, 1996

HAND DELIVERED

Mr. Stephen D. Potts  
 Director  
 Office of Government Ethics  
 1201 New York Avenue, N.W.  
 Suite 500  
 Washington, D.C. 20005-3919

Attention: James O'Sullivan

Dear Mr. Potts:

In accordance with Title I of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. § 2634.602(c), please find enclosed the original Standard Form 278 financial disclosure report filed by Brooksley E. Born, who has been nominated by the President to serve as Chairman of the Commodity Futures Trading Commission ("CFTC" or "Commission"). The Senate Committee on Agriculture, Nutrition, and Forestry will be considering Ms. Born's nomination.

This Office has reviewed the information contained in the enclosed report. After consultations with members of your staff and the Office of Counsel to the President, Ms. Born has made certain undertakings respecting certain assets and activities noted on the report, to avoid any real or apparent conflict of interest in discharging the duties of Chairman. The particulars with regard to these assets and activities follow:

- \* Ms. Born is a partner in the law firm of Arnold & Porter. She will resign from Arnold & Porter upon confirmation by the Senate of her appointment as Chairman of the CFTC.
- \* Upon Ms. Born's resignation from Arnold & Porter, and pursuant to Arnold & Porter's partnership agreement and customary practice with respect to resigning partners, she will receive the following payments from Arnold & Porter:
  - a lump sum payment of her 1995 undistributed earnings within thirty days of her resignation;
  - a lump sum payment of the amount in her Capital A account which consists of paid-in capital to Arnold & Porter;

- 2 -

- Ms. Born's share of Arnold & Porter's 1996 profits to the date of her resignation from the firm, which will be paid in several payments, with the final payments occurring in January and April 1997;
- an amount equal to seventy-five percent of her average annual earnings at Arnold & Porter over the past three calendar years (i.e., 1993, 1994 and 1995) paid in two equal installments, one upon her resignation, and the second in January 1997.
- Ms. Born will receive two equal installments of the fixed amount in her Capital C account, which is a long term capital account consisting of proceeds from the prior sale of an Arnold & Porter building, one payment within thirty days of her seventieth birthday or her death, and the second payment one year later. Ms. Born has represented that the amount in the account is fixed and that the account is non-interest bearing.
- Ms. Born would continue to maintain Keogh and 401(k) plans which she obtained through Arnold & Porter.

\* Ms. Born is an unpaid director of the Arnold & Porter Foundation. She will resign from the Arnold & Porter Foundation upon being confirmed.

\* Ms. Born currently holds positions outside the U.S. Government, listed on pages 14 through 16 of her Form 278. Ms. Born has represented to this Office that she will not engage in any fundraising on behalf of these organizations during her tenure as Chairman of the CFTC.

\* Ms. Born has represented that the Estate of Ruth Born, listed at page 5 of her Form 278, has been entirely distributed.

\* Ms. Born holds interests in the following real estate limited partnerships: A&P Realty Associates, A&P Seven Corners Associates, and A&P N St. Associates. Ms. Born has represented that [1] A&P Realty Associates is a partnership of several current and former Arnold & Porter partners and their friends and owns a limited partnership interest in Preston Park Associates, Texas, a real estate partnership; [2] A&P Seven Corners Associates is a partnership of several current and former Arnold & Porter partners and their friends and owns a limited partnership interest in Seven Corners Associates Limited Partnership, Virginia, a real estate partnership; and [3] A&P N Street Associates is a partnership of persons who were Arnold & Porter partners in the late 1970's or 1980 which was formed to receive a distribution from Arnold & Porter of

- 3 -

an option to purchase certain real property and which owns a limited partnership interest in Lenkin-N Street Associates, Washington, D.C., a real estate partnership which developed the property.

In addition, Ms. Born has agreed to recuse herself from participating in particular matters involving specific parties, as set forth in detail in the attached memorandum. Moreover, Ms. Born's spouse, a practicing attorney, agrees that, during her tenure as Chairman of the CFTC, he will not knowingly agree to represent any parties with respect to particular matters before the CFTC. Ms. Born has also represented to this Office that her spouse is not currently personally representing any clients before the CFTC.

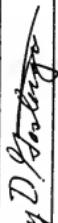
Based on our review of the enclosed report of Ms. Born and the undertakings, representations and agreements referred to above, and our consultations with members of your staff and the Office of Counsel to the President, we have determined that the information set forth therein discloses no real or apparent conflict of interest under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, the Commission's Code of Conduct, 17 C.F.R. § 140.735-1, et seq., its Supplemental Standards of Ethical Conduct, 5 C.F.R. Part 5101, or under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.

Sincerely,



Pat G. Nicolette  
Acting General Counsel

Enclosures

Date of Appointment: January 1995 or Nomination/Month, Day, Year:		MAY - 6, 1996		Agency Use Only
Reporting Status/Address Appropriate to Reporting Office:		Reporting Status Covered by Reporters		Office Use Only
Reporting Status Appropriate to Reporting Office:		<input type="checkbox"/> Incumbent <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Retired		
Last Name:		First, Name and Middle Initial:		
Reporting Individual's Name:		Brooksley E.		
Title of Position:		Department or Agency (If Applicable)		
Chair		Commodity Futures Trading Commission		
Address (Number, Street, City, State, and ZIP Code):		Telephone No. (Include Area Code)		
555 Twelfth St., NW Washington, DC 20004		202-942-5832		
Title of Position(s) and (In)Active Field		Do You Intend to Create a Qualified Discretionary Trust?		
None		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Name of Congressional Committee Considering Nomination:		Senate Agriculture Committee		
Senate				
Title of Position:		Signature of Reporting Individual:		
Chair		 <i>Brooksley Barnes</i>		
Other:		Signature of Agency Ethics Official/Reviewing Official:		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		 <i>Harry D. Goldring</i>		
Other Review If desired by Agency:		Signature of Agency Ethics Official/Reviewing Official:		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		 <i>Paul J. Healy</i>		
Signature:		Signature:		
 <i>Stephen D. Potts</i>		Signature:		
Office of Government Ethics		5-14-96		
Use Only				
Fee for Late Filing:				
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$300 fee.				
Reporting Periods:				
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.				
Termination Filers: The reporting period begins at the previous filing and covered by the previous filing and ends at the date of termination. Part II of Schedule D is not applicable.				
Business, New Executants and Candidates for President and Vice Presidents:				
Schedule A: The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets of any date you choose that is within 31 days of the date of filing.				
Schedule B: Not applicable.				
Schedule C, Part II (Liabilities):				
The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.				
Schedule C, Part III (Agreements or Arrangements): Show any agreements or arrangements as of the date of filing.				
Schedule D: The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.				
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Check box if remarks are continued on the reverse side:				

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(Check box if comments are required on this page only)

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Reporting Individual Name

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## SCHEDULE A

Report of Individuals & Firms		SCHEDULE A		Page Number 2	
		Assets and Income		Valuation of Assets at close of reporting period	Income: type and amount. If "None (or less than \$1,001)" is checked, no other entry is needed in Block C for that item.
BLOCK A		BLOCK B		BLOCK C	
Amount	Type	Other (Specify Type)	Actual Amount: Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honorary	
\$100,000 - \$1,000,000	Over \$1,000,000		\$100,000 - \$1,000,000		
\$50,001 - \$100,000	\$100,001 - \$150,000		\$50,001 - \$100,000		
\$15,001 - \$16,000	\$150,001 - \$160,000		\$15,001 - \$16,000		
\$2,501 - \$2,500	\$160,001 - \$165,000		\$2,501 - \$2,500		
\$1,001 - \$1,000	\$165,001 - \$170,000		\$1,001 - \$1,000		
None (or less than \$201)					
Identify each asset held by you, your spouse, or dependent children for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.					
Identify each asset or source of income held by you, your spouse, or dependent children which reported over \$200 in income during the reporting period					
None [ ]					
Examples					
General Assets Common For Juvue & Smith, Hanover, State of Michigan Fidelity Fund M.A. Hanover 100 Index Fund					
Arnold & Porter - undistributed 1995 earnings 55 Twelfth St., NW Washington, DC 20036					
Riggs National Bank (J) 1920 L St., NW Washington, DC 20036					
Signet Bank (J) 1850 M St., NW Washington, DC 20036					
Fidelity Daily Income Trust (J)					
Acorn International Fund (J)					
Mutual Shares Fund (J)					

## SCHEDULE A continued

Block A		Block B		Block C	
Assets and Income	Valuation of Assets	Income:	Type	Amount	
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period		Other (Specify Type)		Actual Amount	Date (Mo., Day, Year) Only if Household
Identify each asset or source of income which generated over \$200 in income during the reporting period				Only if Other specified	
T. Rowe Price Mid-Cap Growth Fund (J)	x	x			
T. Rowe Price Small-Cap Value Fund (J)	x	x			
T. Rowe Price International Stock Fund (J)	x	x			
T. Rowe Price Science & Technology Fund (J)	x	x			
T. Rowe Price New Asia Fund (J)	x	x			
JMB/245 Park Avenue Associates (J) 900 North Michigan Ave. Chicago, IL 60611	x			Real Estate Partnership Income	Real Estate Partnership Income
Wintrop Miami Associates L.P. (J) One International Place Boston, MA 02110	x			Real Estate Partnership Income	Real Estate Partnership Income
T. Rowe Price Mid Cap Growth Fund (S) (IRA)	x	x			
Fidelity Equity Income Fund (S) (401 (K))	x	x			

\* / Limited partnership income is estimated.

1st Edition - (See the 1st and Edition Prior to 1981) Editions Before the 1st

Block A		Block B		Block C		Page Number 4	
Assets and Income		Valuation of Assets		Income Type		Amount	
Identify each asset held in the production of income which had a fair market value exceeding \$1,000 in the close of the reporting period.				Other (Specify Type)			
1	Vanguard Fund (S) (IRA & Keogh)						
2	Arnold & Porter - undistributed 1955 1/21st St., NW Washington, DC 20004	x	x				
3	A&P Realty Associates (S) 555 Twelfth St., NW Washington, DC 20004	x					
4	A&P Seven Corners Associates 555 Twelfth St., NW Washington, DC 20004	x					
5	A&P N Street Associates (S) 555 Twelfth St., NW Washington, DC 20004	x					
6	Fidelity Capital Appreciation Fund (401(K))	x					
7	Mapleton Foreign Fund (Keogh)	x					
8	Vanguard Horizon Fund (IRA & Keogh)	x					
9	T. Rowe Price Small Cap Value Fund (IRA)	x					

**SCHEDULE A** continued

Block A		Block B		Block C		Amount	
Assets and Income		Valuation of Assets		Income: Type			
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.				Other (Specify Type)			
Identify each asset or source of income which generated over \$200 in income during the reporting period							
-	ASP Reality Associates 555 Twelfth St., NW Washington, DC 20004	x					
2	ASP Seven Corners Associates 555 Twelfth St., NW Washington, DC 20004	x					
3	ASP N St. Associates 555 Twelfth St., NW Washington, DC 20004	x					
4	Signet Bank 1850 M St., NW Washington, DC 20036 (DC)	x					
5	Estate of Ruth Born (distributed)	x	x			x	
6	Dean Witter Liquid Asset Fund (S) (IRA)	x		-		x	
7	GNPAS (S) (IRA & Keogh)	x	x			x	
8	Mutual Discovery Fund (S) (IRA & Keogh)	x				x	
9	Acorn International Fund (S) (IRA & Keogh)	x				x	

Page Number

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## SCHEDULE A continued

Reported Individual's Name Brooksley Born	Block A			Block B			Block C						
	Assets and Income		Valuation of Assets	Income: Type		Amount	Officer (Specify Title)		Actual Amount (Mo., Day, Yr.)				
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.													
	Identify each asset or source of income which generated over \$200 in income during the reporting period.												
1	Scudder Development Fund (S) (IRA)	X											
2	Dean Witter Reality Yield Plus IP 2 World Trade Center New York, NY 10048 (S) (IRA)	X											
3	North American Trust Co. Liquid Treasury Fund #2 (S) (Keogh)	X											
4	Harbor International Fund (S) (Keogh)	X											
5	Lindner Growth Fund (S) (Keogh)	X											
6	U.S. Treasury Notes (S) (Keogh)	X											
7	Lindner Dividend Fund (S) (Keogh)	X											
8	Easy Growth Treasury Receipts (zero coupon bond) (S) (Keogh)	X											
9	Mutual Shares Fund (S) (Keogh)	X											

## SCHEDULE A continued

Brooksley Born

Brooksley Born		SCHEDULE A continued				Page Number 7	
Block A		Block B		Block C			
Assets and Income		Valuation of Assets		Income: Type		Amount	
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.							Date (Mo., Day, Yr.)
Identify each asset or source of income which generated over \$200 in income during the reporting period.							Only If Held/used
1. Loan From Keogh Plan to Alexander Bennett (S) (Keogh)	x						
2. Public Storage (S) (Keogh)	x						
3. Fidelity Retirement Money Market Fund (401(K)) (Sold)	x						
4. Dean Witter Liquid Asset Fund (IRAs)	x						
5. QNPPS (IRA & Keogh)	x						
6. U.S. Treasury Notes (IRA & Keogh)	x						
7. T. Rowe Price International Stock Fund (IRA & Keogh)	x						
8. Easy Growth Treasury Receipts (zero coupon bond) (Keogh)	x						
9. CGM Mutual Fund (Keogh)	x						

Brooksley Born

## SCHEDULE A continued

Block A		Block B		Block C		Year Number 8
Assets and Income	Valuation of Assets	Income: Type	Amount	Other (Specify Type)	Actual Amount Only if "Other" specified	
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.						
Identify each asset or source of income which generated over \$100 in income during the reporting period.						
1 Mutual Beacon Fund (Keogh)	X	X				
2 Mutual Discovery Fund (Keogh)	X	X				
3 T. Rowe Price Mid Cap Growth (Keogh)	X	X				
4 Bean Bitter Reality Yield 2100 1/2 World Trade Center New York, NY 10048 (Keogh)	X	X				
5 Public Storage (Keogh)	X	X				
6 Acorn International Fund (Keogh & IRA)	X	X				
7 Lindner Dividend Fund (Keogh & IRA)	X	X				
8 North American Trust Co. Liquid Treasury Fund #2 (Keogh)	X	X				
9 Janus Venture Fund (Keogh)	X	X				



		SCHEDULE A continued		Page Number 10	
Block A		Block B		Block C	
Assets and Income		Valuation of Assets		Income: Type	
				Other (Specify Type)	Amount
1	Arnold & Porter - Capital A 555 Twelfth St., NW Washington, DC 20004	X			
2	Arnold & Porter - Capital A (S) / 555 Twelfth St., NW Washington, DC 20004		X		
3					
4					
5					
6					
7					
8					

Note (as less than \$1,000)

Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.

Identify each asset or source of income which generated over \$200 in income during the reporting period.

Note (as less than \$200)

Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.

Identify each asset or source of income which generated over \$200 in income during the reporting period.

Date  
(Mo., Day,  
Yr.)

Only if  
Research  
Specified

Over \$1,000,000

\$100,001 - \$1,000,000

\$50,001 - \$50,000

\$15,001 - \$15,000

\$5,001 - \$5,000

\$2,501 - \$2,500

\$1,001 - \$1,000

\$201 - \$200

Note (as less than \$200)

Capital Gain

Interest

Rents and Royalties

Dividends

Other

Capital Loss

Executive Trust

Equity Fund

Investment Fund

Qualified Trust

Other

Type

Income

Other

Do not complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

1. I am not a new entrant, nominee, Vice Presidential or Presidential Candidate  
2. I am not a new entrant, nominee, Vice Presidential or Presidential Candidate  
3. I am not a new entrant, nominee, Vice Presidential or Presidential Candidate

Brooksley Born		SCHEmULE B NOMINEE - NOT APPLICABLE		Form Number 11
<b>Part I: Transactions</b> Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not		<input type="checkbox"/> None		
<small>Reporting Individual's Name</small> Brooksley Born		<small>Manufacture of Arms</small> Family: Central Authority, Common		
<small>Report a transaction involving property used solely as your personal residence or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture block to indicate sales made pursuant to a certificate of divestiture from OGE.</small>		<small>Transaction Type (a)</small> 1. Sale 2. Purchase 3. Transfer 4. Other 5. None		
<small>Report any gift, loan, or other financial assistance received from a source other than your spouse, your dependent children, or your parents.</small>		<small>Amount of Transaction (a)</small> 1. \$0.00 2. \$100.00 3. \$200.00 4. \$300.00 5. \$400.00 6. \$500.00 7. \$600.00 8. \$700.00 9. \$800.00 10. \$900.00 11. \$1,000.00 12. \$1,100.00 13. \$1,200.00 14. \$1,300.00 15. \$1,400.00 16. \$1,500.00 17. \$1,600.00 18. \$1,700.00 19. \$1,800.00 20. \$1,900.00 21. \$2,000.00 22. \$2,100.00 23. \$2,200.00 24. \$2,300.00 25. \$2,400.00 26. \$2,500.00 27. \$2,600.00 28. \$2,700.00 29. \$2,800.00 30. \$2,900.00 31. \$3,000.00 32. \$3,100.00 33. \$3,200.00 34. \$3,300.00 35. \$3,400.00 36. \$3,500.00 37. \$3,600.00 38. \$3,700.00 39. \$3,800.00 40. \$3,900.00 41. \$4,000.00 42. \$4,100.00 43. \$4,200.00 44. \$4,300.00 45. \$4,400.00 46. \$4,500.00 47. \$4,600.00 48. \$4,700.00 49. \$4,800.00 50. \$4,900.00 51. \$5,000.00 52. \$5,100.00 53. \$5,200.00 54. \$5,300.00 55. \$5,400.00 56. 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Brooksley Born		SCHEDULE C		Map Number 12																														
<b>Part I: Liabilities</b> Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobile, household furniture or appliances, and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.		<input type="checkbox"/> None <input type="checkbox"/> Other		Category of Amount or Value (a)																														
<table border="1"> <thead> <tr> <th colspan="2">Creditor (Name and Address)</th> <th>Type of Liability</th> <th>Date</th> <th>Interest Rate</th> <th>Term of Contract</th> </tr> </thead> <tbody> <tr> <td colspan="2">First Interstate Bank, Washington, DC John Street, 123 1/2 St., Washington, DC</td> <td>Manager of retail property, Deposits Professional fees</td> <td>1981 1988</td> <td>12% 10%</td> <td>25 yrs. as arranged</td> </tr> <tr> <td colspan="2">Alexander E. Bennett's Keogh Plan North American Trust Co., P.O. Box 84419 San Diego, CA 92138</td> <td>Loan from Keogh Plan</td> <td>1993</td> <td>8%</td> <td>5 yrs.</td> </tr> <tr> <td colspan="2">4</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2">5</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Creditor (Name and Address)		Type of Liability	Date	Interest Rate	Term of Contract	First Interstate Bank, Washington, DC John Street, 123 1/2 St., Washington, DC		Manager of retail property, Deposits Professional fees	1981 1988	12% 10%	25 yrs. as arranged	Alexander E. Bennett's Keogh Plan North American Trust Co., P.O. Box 84419 San Diego, CA 92138		Loan from Keogh Plan	1993	8%	5 yrs.	4						5								
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4																																		
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<b>Part II: Agreements or Arrangements</b> Report your agreements or arrangements for: <ul style="list-style-type: none"> <li>(1) continuing participation in an employee benefit plan (e.g. pension, 401K, deferred compensation); (2) continuation of payment by a former employer (including severance payments);</li> </ul>		<input type="checkbox"/> (3) leave of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements <input type="checkbox"/> None		Status and Terms of any Agreement or Arrangement																														
6		Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share held on as of 12/31/1995.		Arnold & Porter, Washington, DC Date: 1/19/96																														
7		I will resign my partnership in Arnold & Porter upon confirmation. Upon my resignation and pursuant to partnership agreement and customary practice with respect to resigning partners, I will receive the following payments from the Firm: <ul style="list-style-type: none"> <li>(A) my 1995 undistributed earnings, if they have not been previously distributed, will be paid in a lump sum within thirty days of my resignation;</li> <li>(B) the amount in my Capital A account will be paid in a lump sum within thirty days of my resignation;</li> <li>(C) my partnership share of the Firm's 1996 profits to the date of my resignation will be paid in several payments, with the final payments occurring in January 1997 and April 1997.</li> </ul>		Arnold & Porter, Washington, DC Date: 1/19/96																														



Brooksley Born

**SCHEDULE D**

Page Number

14

**Part I: Positions Held Outside U.S. Government**

Report any position held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or social, fraternal, or political antisocial and those solely of an honorary nature.

None

Organization (Name and Address)

Example	Name & Address	Type of Organization	Position Held		From (Date, Year)		To (Date, Year)	
			President	Partner	President	Partner	President	Partner
1 Arnold & Porter, Washington, DC (will resign on confirmation)	Law Firm		Partner (paid)		1/74		Present	
1 American Bar Foundation, Chicago, IL	Non-profit education & research		Director (unpaid)		9/89		Present	
1 Historical Society of the District of Columbia Circuit, Washington, DC	Non-profit education & research		Director (unpaid)		1990		Present	
1 National Women's Law Center, Washington, DC	Non-profit charity & education		Board Chair & Director (unpaid)		1981		Present	
1 Center for Law and Social Policy, Washington, DC	Non-profit charity & education		Trustee (unpaid)		1977		Present	
1 Lawyers' Committee for Civil Rights under Law, Washington, DC	Non-profit charity & education		Director (unpaid)		1993		Present	

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any organization when you directly provided the services generating a fee or profit of more than \$5,000. You need not report the U.S. Government as a source.

None

Source (Name and Address)

Example	Name & Address	Brief Description of Duties		
		Legal services	Legal services in connection with law enforcement	Legal services
1 Arnold & Porter, Washington, DC	One Jones & Smith, Minneapolis, MN Alene University (client of One Jones & Smith) Minneapolis, MN			
1 Arnold & Porter, Washington, DC				
1 League of Women Voters Education Fund, Washington, DC		Legal services to client of Arnold & Porter.		
1 Banco Central do Brasil (Federative Republic of Brazil), Brasilia, Brazil		Legal services to client of Arnold & Porter.		
1 Kraft General Foods, Chicago, IL		Legal services to client of Arnold & Porter.		
1 W. Arthur Benson, Bel Air, MD		Legal services to client of Arnold & Porter.		
1 Whittaker Corporation, Simi Valley, CA		Legal services to client of Arnold & Porter.		



## SCHEDULE D

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions inlude but are not limited to those in an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those society of an honorary nature.

None 

## Organizations (Name and Address)

Organization	Type of Organization	Position Held	From (Mo. & Yr.)	To (Mo. & Yr.)
None	New profit corporation	President	6/91	Present
Law firm	Partner	7/91	11/91	
Partnership holding limited partnership interest in real estate partnership	Partner <sup>*/</sup>	1982	Present	
Partnership holding limited partnership interest in real estate partnership	Partner <sup>*/</sup>	1983	Present	
Partnership holding limited partnership interest in real estate partnership	Partner <sup>*/</sup>	1981	Present	

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source

None 

## Source (Name and Address)

None	Legal services	Legal services in connection with university construction
None	None	None

TO: SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

FROM: DAVID D. SPEARS

RESPONSES TO QUESTIONNAIRE FOR CFTC NOMINEES:

DATE 5/6/96

**BIOGRAPHICAL INFORMATION (PUBLIC):**

1. Full name (include any former names used).

David Daryl Spears

2. Address List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Home - 2009 Ventoso Road, Wichita, Kansas 67204 316-755-3010

Office - 100 North Broadway, Wichita, Kansas 67202 316-263-4956

3. Date and place of birth.

DOB 02-15-57 at Smith Center, Kansas USA

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married

Pamela Ann Spears (Maiden name Pamela Ann Wyland)

My wife is not employed full time outside of the Home. She works part time as a substitute paraprofessional at West Elementary School, 501 West Street, Valley Center, KS 67147

5. Education. List each college and graduate or professional school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Colby Community College, Colby, Kansas 8/75 - 5/77

Associate of Arts Degree - May, 1977

Major - Agricultural Economics

Kansas State University, Manhattan, Kansas 8/77 - 5/79

Bachelor of Science Degree, Cum Laude - May, 1979

Major - Agricultural Economics

6 Employment Record. List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions, and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college; include a title and brief job description.

June 1979 - October 1989

COBANK (Wichita Bank for Cooperatives/Farm Credit Services) Wichita, KS

Positions: Loan Representative to Assistant Vice President

Responsible for maintaining major lending relationships with Bank customers.

Supervised and directed credit team (group) and served on Bank's loan committee and Bank management committees.

October 1989 - Present

United States Senator Bob Dole, Washington, D C.

Positions. Legislative Assistant for Agriculture, (October 1979 to July 1992)

State Director, (July 1992 to Present)

November 1981 - Present

Owner and operator of 80 acres of farm land in rural Osborne County, Kansas The land has been enrolled in CRP since 1987. The contract expires on September 30, 1997.

7 Military Service. Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8 Government Service. State (chronologically) your government service or public offices you have held, including the terms of service grade levels and whether such positions were elected or appointed.

None other than staff positions for Senator Bob Dole (listed above)

9 Honors and Awards. List any scholarships, fellowships, honorary degrees, and honorary society memberships that you received and believe would be of interest to the Committee

Miscellaneous academic and scholastic honors and scholarships in College.

10 Political Affiliation. The statute creating the Commodity Futures Trading Commission requires that no more than three members be from the same political party List your current political party registration or affiliation.

Republican.

11. Other Memberships: List all organizations in which you belong, excluding religious organizations.

Unified School District 262 - West Elementary School PTA  
Unified School District 262 - West Elementary School Site Council  
NYSCA (National Youth Sports Coaches Assn..)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials (including published speeches) you have written. Please include on this list published materials on which you are listed as the principal editor. It would be helpful to the Committee if you could provide one copy of all published material that may not be readily available. Also, to the maximum extent practicable, please supply a copy of all unpublished speeches you made during the past five years on issues involving agriculture, nutrition, forestry or commodity futures policy or related matters.

No published articles, reports or other materials. As Senator Dole's Agriculture Legislative Assistant and State Director, I have given numerous talks and participated on panels before various agriculture and commodity groups regarding related issues including the 1990 and 1996 Farm Bills. Most of these talks were very general in nature addressing the current status of legislation and budget discussions. None of the talks were written or published. The speeches were based on personal knowledge of subject matter. Personal notes may have been used in some cases, but the notes were not retained.

13. Health: What is the present state of your health?

Excellent.

TO: SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

FROM: DAVID D. SPEARS

RESPONSES TO QUESTIONNAIRE FOR CFTC NOMINEES:

DATE 5/6/96

**FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC):**

1. Have you severed all connections with your immediate past private sector employers, business firms, associations, and/or organizations?

I am currently serving as Senator Dole's State Director and intend to continue to serve in that capacity until confirmed. At that time, I intend to sever my professional relationship with the Senator. While I used to work for COBANK, I have no continuing relationship with any private sector employer, business firms, associations, and/or organizations.

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, incompletely completed contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

CRP contract on 80 acres. The annual contract payment amount is \$4,378. The current contract expires on September 30, 1997.

3. Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch? (If yes, please give a brief description including location, size and type of operation.)

Yes, 80 acres of farm land located in Osborne County, Kansas. The farm land has a wheat and grain sorghum base. The land was enrolled into the CRP in 1987 and the current contract expires on September 30, 1997

4. If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during our service with the government? (If so, explain.)

None other than continued ownership of farm.

5. Do you have any plans to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations after completing government service? (If yes, give details.)

No.

6. Has anyone made a commitment to employ you or retain your services in any capacity after you leave government service? (If yes, please specify )

No.

7. Identify all investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated

None

8. Have you ever received a government guaranteed student loan? If so, has it been repaid?

To assist the financing of my last semester in college, in the spring of 1979, I received a \$1,000 National Direct Student Loan (NDSL). This loan was repaid in full on or before the maturity date.

9. If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your response to the above items.

I do not anticipate any conflict of interest. However, if any conflict should arise I intend to discuss the potential conflict with the designated Agency official.

May 20, 1996

The Honorable Richard G. Lugar  
Chairman  
Committee on Agriculture,  
Nutrition and Forestry  
328A Russell Senate Office Building  
Washington, D.C. 20510-6000

Dear Mr. Chairman:

Pursuant to the reporting requirements of section 101 (b) (1) of the Ethics in Government Act, 5 U.S.C. § 101 (b) (1), since the date of my new entrant SF 278 until this date, I have received no outside earned income (excluding dividends, rents, interest and capital gains) and no honoraria that is covered by section 102 (a) (1) (A). However, I have received income from the United States Government as an employee of the United States Senate.

With respect to the new entrant SF 278 that I signed on January 23, 1996, please also note the following minor correction which I am making based on year-end financial data that was not available at the time that my report was completed. On page 1 of Schedule A, line 4, it is reported that I received between \$201 and \$1000 in income from my IRA in the United New Concepts Fund. That income figure should be changed to between \$1001 and \$2500.

Sincerely,



David D. Spears

cc: Stephen D. Potts, Director  
Office of Government Ethics

Pat G. Nicolette  
Acting General Counsel and  
Alternate Designated Agency Ethics Official



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

May 8, 1996

The Honorable Richard G. Lugar  
Chairman  
Committee on Agriculture, Nutrition  
and Forestry  
United States Senate  
Washington, DC 20510-6000

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David D. Spears, who has been nominated by President Clinton for the position of Commissioner of the Commodity Futures Trading Commission (CFTC).

We have reviewed the report and have also obtained advice from the CFTC concerning any possible conflict in light of its function and the nominee's proposed duties.

Based thereon, we believe that Mr. Spears is in compliance with applicable laws and regulations governing conflicts of interest.

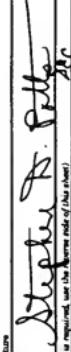
Sincerely,

Handwritten signature of Stephen D. Potts, with the letters "ZPC" written near the end of the signature.  
Stephen D. Potts  
Director

Enclosure

## Executive Branch PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved  
OMB No. 2000-0001

<b>Reporting Status</b> <input checked="" type="checkbox"/> Appropriate <input type="checkbox"/> Not Appropriate	<b>Counter Year Covered by Report</b> <input type="checkbox"/> Last Year <b>Last Name</b> <b>SPEARIS</b>	<b>Date of Appointment: Committee, Elected, or Nomination (Month, Day, Year)</b> <input checked="" type="checkbox"/> New Executive, Nominee, or Candidate <b>Title or Position</b> <b>Commissioner</b>	<b>Termination Date (If Applicable) (Month, Day, Year)</b> <input type="checkbox"/> File <b>Fee for Late Filing</b> <b>MAY - 6 1996</b>	<b>Any individual who is required to file this report, and does so more than 30 days after the date that the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.</b>	<b>Agency Use Only</b> <input type="checkbox"/> OGE Use Only
<b>Position for Which Filing</b> <b>Commissioner</b>		<b>Commodity Futures Trading Commission</b> <b>Address (Street, City, State, and Zip Code)</b> <b>Office of Senator Bob Dole</b> <b>100 North Broadway, Wichita, KS 67201</b> <b>Title (Position) and Dates (If Not Same as Above)</b> <b>State Director, U.S. Senator Bob Dole</b>			
<b>Location of Present Office (or Forwarding Address)</b> <b>President(s) Held with the Federal Government (If Not Same as Above)</b> <b>President(s) Held with the Executive Branch (If Not Same as Above)</b>		<b>Name of Congressional Committee Considered (Nomination</b> <b>Senate Ag. Committee</b> <b>Certification</b> <b>I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.</b> <b>Other Review (If desired by agency)</b> <b>Office of Government Ethics</b> <b>Use Only</b>			
		<b>Do You intend to Create a Qualified Diversified Trust?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
		<b>Date (Month, Day, Year)</b> <b>1/23/96</b>			
		<b>Date (Month, Day, Year)</b> <b>5/6/96</b>			
		<b>Date (Month, Day, Year)</b> <b>5/6/96</b>			
		<b>Date (Month, Day, Year)</b> <b>5/6/96</b>			
		<b>Signature of Reporting Individual</b>  <b>Signature of Other Reviewer</b>  <b>Signature</b>  <b>Signature</b> 			
<small>Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet)</small>					





David D. Spears

Page Number  
 New Entrant/Nominee/Candidate:  Schedule Not Applicable:

**SCHEDULE B**

**3**

**Part I: Transactions**

Report any purchase, sale, or exchange by you, your spouse, or dependent child during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not

report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of diversion" block to indicate sales made pursuant to a certificate of diversion from OGE.

Line Number	Description of Transaction	Amount of Transaction (\$)	Transaction Type(s)	Date (Mo., Year)	Note
1	Example: General Airlines Contribution				
2					
3					
4					
5					

**Part II: Gifts, Reimbursements, and Travel Expenses**

Report the source, a brief description (including travel, dates, and the nature of expenses provided), and the value of: (1) transportation, lodging, food, or entertainment received from one source totaling \$250 or more (unless for personal hospitality at the donor's personal or family residence); (2) other gifts from one source totaling \$100 or more in value; and (3) cash reimbursements of \$250 or

more from one source. Exclude gifts, reimbursements and travel expenses from the U.S. Government. Also exclude gifts from relatives, gifts of \$75 or less when exceeding gifts for the total from one source, and gifts and reimbursements received by your spouse or dependent child that were given totally independent of the relationship to you. See instructions for further calculations.

Line Number	Source (Name and Address)	Brief Description	Value
1	Neil A. Rock Collection, NY, NY Neil A. Rock Collection, NY, NY	Airline tickets, hotel room & meals incident to national conference 6/19/90 Lodging - conference for retired president	\$600 - - - - - \$125
2			
3			
4			
5			
6			

Reporting Individual's Name

David D. Spears

**SCHEDULE C**

Page Number

4

**Part I: Liabilities**

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automo-

biles, household furniture or appliances, and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

*Creditor (Name and Address)*

DC Examples	First National Bank, Washington, DC John Morris, 1225 15th St., Washington, DC	Mortgage on farm ground 80 Ac. Osborne County, KS	1981 1989	1.7% 1.0%	25 yrs. on demand	Note <input type="checkbox"/>
1	Federal Land Bank Assn. of Hays, KS					
2	2905 Vine Street, Box 836, Hays, KS 67601					
3						
4						
5						

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an

employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

Note

Example	Status and Terms of Any Agreement or Arrangement	Persons	Date
1	Payment to ownership agreement, will receive lump sum payment of capital account & ownership share (calculated on service performed through 1/61) and retained pension benefits (independently managed, fully funded, defined contribution plan)	Die Alors & Smith, Hinsdale, USA	7/85
1	Continued participation in former employee benefit plan.	COBANK, Denver, CO	6/79
2	COBANK-AGB T&G - CREDIT BANK Employee Savings Plan (401(k))	COBANK, Denver, CO	
3	Neither party making any contributions.		
4			
5			
6			
7			
8			

SCHEDULE D		Page Number <b>5</b>																																								
<p><b>Part I: Positions Held Outside U.S. Government</b>            Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or         </p>																																										
consultants of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.																																										
None <input checked="" type="checkbox"/>																																										
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6																																										
<p><b>Part II: Compensation In Excess Of \$5,000 Paid by One Source</b>            Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation.         </p>																																										
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